

Defendant

## COMPLAINT AND DEMAND FOR JURY TRIAL

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising  
2 under the laws of the United States.

3 3. Defendant conducts business in the Commonwealth of Pennsylvania  
4 and as such, personal jurisdiction is established.  
5

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

7 **PARTIES**

8 5. Plaintiff is a natural person residing in Pine Grove, Pennsylvania  
9 17963.  
10

11 6. Plaintiff is a "person" as that term is defined by 47 U.S.C. 153 (39).

12 7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C.  
13 §1692a(3).  
14

15 8. Defendant is a debt collection company with headquarters located at  
16 140 Corporate Boulevard, Norfolk, Virginia 23502.

17 9. Defendant is a "person" as that term is defined by 47 U.S.C. § 153(39).

18 10. Defendant is a "debt collector" as that term is defined by 15 U.S.C. §  
19 1692(a)(6), who repeatedly contacted Plaintiff in an attempt to collect a "debt" as  
20 defined by 15 U.S.C. §1692(a)(5).  
21

22 11. Defendant acted through its agents, employees, officers, members,  
23 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
24 representatives and insurers.  
25

## FACTUAL ALLEGATIONS

12. At all pertinent times hereto, Defendant was hired to collect a consumer debt and attempted to collect that debt from Plaintiff.

13. Defendant collects, and attempts to collect, debts incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of creditors using the U.S. Mail, telephone and/or internet.

14. The Plaintiff never incurred any debt in connection with a business or commercial activities, and therefore, the debt if truly her obligation, could only have arisen from financial obligation for primarily personal, family or household purposes.

15. Beginning in or around April 2015 and continuing thereafter, Defendant placed repeated harassing telephone calls to Plaintiff's cellular telephone in its attempts to collect an alleged debt.

16. Defendant's collectors called Plaintiff from telephone numbers including, but not limited to, (205) 379-6018; (731) 256-9337; (757) 320-4166; (731) 577-4188; (866) 298-1447; (757) 355-6494; (469) 608-8899; (731) 256-6444; (757) 215-2332; (757) 644-4872; (855) 537-2421; (620) 860-0783; (620) 860-0202; (866) 519-8330; (757) 947-2024; and (757) 215-2370. The undersigned has confirmed that these numbers belong to Defendant.

17. Plaintiff has had this cellular telephone number for more than one year.

1           18. Plaintiff has only used this number as a cellular telephone number.

2           19. The phone number has been assigned to a cellular telephone service for  
3 which Plaintiff incurs a charge for incoming calls.

4           20. Plaintiff never provided permission to Defendant to call her cellular  
5 telephone number.  
6

7           21. Further, in June 2015, Plaintiff instructed Defendant to stop calling her  
8 on her cellular telephone.

9           22. However, Defendant failed to update its records to cease calls to  
10 Plaintiff's cellular telephone.  
11

12           23. Defendant called Plaintiff, on average, anywhere from one (1) to seven  
13 (7) times a day.

14           24. Defendant called Plaintiff on the following dates: April 17<sup>th</sup> (2x) & 27<sup>th</sup>  
15 of 2015; May 5<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup>, 21<sup>st</sup> (2x) & 23<sup>rd</sup> of 2015; June 4<sup>th</sup> (2x) & 22<sup>nd</sup> of 2015;  
16 July 9<sup>th</sup> (3x), 11<sup>th</sup> (2x), 13<sup>th</sup>, 17<sup>th</sup> (2x), 21<sup>st</sup>, 22<sup>nd</sup> (2x), 27<sup>th</sup> & 31<sup>st</sup> of 2015; August  
17 2<sup>nd</sup>, 4<sup>th</sup>, 12<sup>th</sup>, 26<sup>th</sup> & 28<sup>th</sup> of 2015; September 25<sup>th</sup> & 26<sup>th</sup> of 2015; October 16<sup>th</sup>  
18 (2x), 19<sup>th</sup>, 23<sup>rd</sup>, 25<sup>th</sup> (2x), 27<sup>th</sup> (2x) & 29<sup>th</sup> (2x) of 2015; November 2<sup>nd</sup>, 3<sup>rd</sup> (2x),  
19 12<sup>th</sup>, 17<sup>th</sup> (3x) & 18<sup>th</sup> (2x) of 2015; and December 16<sup>th</sup> (7x) of 2015.  
20  
21

22           25. Defendant used an automatic telephone dialing system, automated  
23 message and/or prerecorded voice when contacting Plaintiff.  
24

25           26. At times, Plaintiff would be met with an automated voice asking her to

1 hold and then after a few seconds a live representative would pick up.

2 27. Further, when calling Plaintiff, Defendant called her at times when it  
3 was inconvenient for her to receive collection calls. Specifically, Defendant called  
4 her when she was at work.

5 28. Defendant's telephone calls were not made for "emergency  
6 purposes."

7 29. Defendant failed after its initial communication, to send Plaintiff  
8 within five (5) days a notice of her rights, including the right to dispute the debt,  
9 right to seek validation and/or the right to know the amount claimed from her as  
10 well as other details about the debt.

11 30. Defendant's actions as described herein were taken with the intent to  
12 harass, abuse, and coerce payment from Plaintiff.

13 31. Upon information and belief, Defendant conducts business in a  
14 manner which violates both the FDCPA and TCPA.

15  
16  
17  
18  
19 **DEFENDANT VIOLATED THE**  
20 **FAIR DEBT COLLECTION PRACTICES ACT**

21 **COUNT I**

22 32. Defendant's conduct violated 15 U.S.C. § 1692c(a)(1).

23 a. A debt collector violates § 1692c(a)(1) of the FDCPA by  
24 communicating with a consumer in connection with the  
25

1 collection of any debt at any unusual time or place or a time or  
2 place known or which should be known to be inconvenient to  
3 the consumer. In absence of knowledge of circumstances to  
4 the contrary, a debt collector shall assume that the convenient  
5 time for communicating with a consumer is after 8:00 a.m. and  
6 before 9:00 p.m., local time at the consumer's location.  
7

- 8 b. Here, Defendant violated §1692c(a)(1) of the FDCPA when it  
9 called Plaintiff on her cellular telephone when she was at work  
10

11  
12 **COUNT II**

13 33. Defendant's conduct, as detailed in the preceding paragraph, violated  
14 15 U.S.C. §§ 1692d and 1692d(5).  
15

- 16 a. A debt collector violates § 1692d of the FDCPA by engaging  
17 in conduct of the natural consequence of which is to harass,  
18 oppress, or abuse any person in connection with the collection  
19 of a debt.  
20

- 21 b. A debt collector violates § 1692d(5) of the FDCPA by causing  
22 a telephone to ring or engaging any person in telephone  
23 conversation repeatedly or continuously with intent to annoy,  
24 abuse, or harass any person at the called number.  
25

1 c. Here, Defendant violated §§ 1692d and 1692d(5) of the  
2 FDCPA by repeatedly contacting Plaintiff on her cellular  
3 telephone.

4 **COUNT III**

5 34. Defendant's conduct, as detailed in the preceding paragraphs, violated  
6 15 U.S.C. § 1692f of the FDCPA.

7 a. A debt collector violates § 1692f of the FDCPA by using unfair  
8 or unconscionable means to collect or attempt to collect any  
9 debt.

10 b. Here, Defendant violated § 1692f of the FDCPA engaging in  
11 other unfair and unconscionable debt collection practices,  
12 including failing to update its records to cease collection calls  
13 to Plaintiff's cellular telephone after she told them to stop  
14 calling.

15 **COUNT IV**

16 35. Defendant's conduct, as detailed in the preceding paragraphs, violated  
17 15 U.S.C. § 1692g(a).

18 a. A debt collector violates § 1692g(a) of the FDCPA by failing,  
19 within five days after the initial communication with a  
20 consumer in connection with the collection of a debt, to send  
21

1 the consumer a written notice containing (1) the amount of the  
2 debt; (2) the name of the creditor to whom the debt is owed; (3)  
3 a statement that unless the consumer, within thirty days after  
4 receipt of the notice, disputes the validity of the debt, or any  
5 portion thereof, the debt will be assumed to be valid by the debt  
6 collector; (4) a statement that if the consumer notifies the debt  
7 collector in writing within the thirty-day period that the debt, or  
8 any portion thereof, is disputed, the debt collector will obtain  
9 verification of the debt or a copy of a judgment against the  
10 consumer and a copy of such verification or judgment will be  
11 mailed to the consumer by the debt collector; and (5) a  
12 statement that, upon the consumer's written request within the  
13 thirty-day period, the debt collector will provide the consumer  
14 with the name and address of the original creditor, if different  
15 from the current creditor.  
16  
17  
18  
19

- 20 b. Here, Defendant violated § 1692g(a) of the FDCPA by failing  
21 to send Plaintiff written notification of her rights to dispute the  
22 debt, request verification of the debt and/or to request  
23 information about the creditor within five (5) days of its initial  
24 communication with her.  
25



**DEFENDANT VIOLATED THE  
TELEPHONE CONSUMER PROTECTION ACT**

**COUNT V**

36. Defendant's conduct, as detailed in the preceding paragraphs, violated the Telephone Consumer Protection Act.

37. Under § 227(b)(3)(A) of the TCPA, a person or entity may bring a private cause of action in an appropriate court based on a violation of the TCPA or the regulations prescribed under the TCPA to enjoin such violation.

38. Under § 227(b)(3)(B) of the TCPA, a person or entity may bring a private cause of action in an appropriate court "to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation whichever is greater."

39. Despite the fact that Plaintiff never consented to Defendant placing calls to her, Defendant repeatedly placed non-emergency calls to Plaintiff's cellular telephone.

40. Based upon the conduct of Defendant, Plaintiff avers that the enhancement of damages provided for by the TCPA allowing for Plaintiff to recover up to \$1,500 per call/violation be applied to calls placed.

41. Defendant's conduct violated § 227(b)(1)(A)(iii) of the TCPA by placing repeated calls using an automatic telephone dialing system to Plaintiff's cellular telephone without prior express consent.

1 WHEREFORE, Plaintiff, TRACIE KEEFER, respectfully prays for a  
2 judgment as follows:

- 3 a. All actual damages suffered pursuant to 15 U.S.C.  
4 §1692k(a)(1);  
5  
6 b. Statutory damages of \$1,000.00 for the violation of the FDCPA  
7 pursuant to 15 U.S.C. §1692k(a)(2)(A);  
8  
9 c. All reasonable attorneys' fees, witness fees, court costs and  
10 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.  
11 §1693k(a)(3);  
12  
13 d. Statutory damages of \$500.00 per telephone call in violation of  
14 the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);  
15  
16 e. Statutory damages of up to \$1,500 for each call in violation of  
17 the TCPA, pursuant to 47 U.S.C. §§ 227(c)(5)(B) and  
18 227(c)(5)(C), which permits the Court in its discretion to award  
19 such damages if it finds that Defendant willfully or knowingly  
20 violated the TCPA; and  
21  
22 f. Any other relief deemed appropriate by this Honorable Court.  
23  
24  
25

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, TRACIE KEEFER, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

By: /s/ Craig Thor Kimmel  
CRAIG THOR KIMMEL  
Attorney ID No. 57100  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
Phone: (215) 540-8888  
Fax: (877) 788-2864  
Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)

Dated: 12-17-15